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IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
BILASPUR

CR.M.P.NO. 259 OF 2007

SINGLE BENCH : HON'BLE SHRI DHIRENDRA MISHRA, J

PETITIONERS Rajesh Thomas & another

VERSUS

RESPONDENTS State of Chhattisgarh

O R D E R

POST ON 3 AUGUST 2007

Sd/-
Dhirendra Mishra
Judge

2- 8.2007

(75)

IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH
BILASPUR

CR.M.P.NO. 259 OF 2007

SINGLE BENCH : HON'BLE SHRI DHIRENDRA MISHRA, J

In the matter of section 482 of the Criminal Procedure Code.

And

In the matter of quashing of criminal complaint filed by the Govt. of Chhattisgarh Through : Mr. M.S. Tomar, Drug Inspector, Distt : Bilaspur, (C.G.) presented at Bilaspur, is pending before the learned J.M.F.C. Bilaspur.

PETITIONERS

1. Rajesh Thomas S/O S.P. Thomas
Depot Executive M/S Alkem Lab. LTD.
Depot near Vinay Mitra Mandal, Pachpedi Naka, Raipur, House No.376, Priyadarskini colony, Raipur (C.G.)

2. M/S Alkem Lab. LTD, C-6/1, M.I.D.C. Taloja 410205, (Maharashtra) Through : **Director,** Dhananjay Kumar Singh, R/O Buddha Colony Canal road, Patana (Bihar)

VERSUS

RESPONDENTS

State of Chhattisgarh
Through : Drug Inspector (M.S. Tomar)
Distt: Bilaspur (C.G.)

Present:

Mr. R. Jha with Mr. Hemant Gupta and Mrs. Nupoor Rai, counsel for the petitioners.
Mr. G.K. Beriwal, Dy. A.G. for the State/respondent.

O R D E R
(Passed on 3 August 2007)

By this petition under Section 482 of the Code of Criminal Procedure (for brevity 'the Code') the petitioners have impugned the order dated 31.3.2006 passed by Judicial Magistrate First Class, Bilaspur in complaint case No. 585/2006 whereby on the basis of complaint filed by the Drug Inspector, Bilaspur offence under Section 17 B (d), read with Section 18 (a)(i) and Section 27 (c) of The Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act'), has been registered and non-bailable warrant has been issued against the petitioners.

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2. Learned counsel for the petitioners submitted that proceedings drawn by the learned JMFC, Bilaspur on the basis of above complaint deserves to be quashed because of the following reasons:

(A) That, the samples drawn on 31.8.2004 of five different medicines were not sent by the complainant for analysis and only the sample of Alkem plus was forwarded for analysis malafidely;

(B) That, the samples were taken on 31.8.2004 but the same were sent on 4.9.2004 though Section 23 (4)(i) of the Act requires that the same should be sent forthwith for analysis;

(C) That, Rule 56 of The Drugs and Cosmetic Rules, 1945 (for brevity 'the Rules) mandates that the inspector taking samples should intimate the purpose in writing in Form 17 to the person from whom he takes it. There is also non-compliance of Rule 57 of the Rules as the sample is to be sent to the Govt. analyst in a sealed packet together with memorandum in Form 18;

(D) That, Section 25(4) of the Act prescribes that the Court on its own or at the request of the complainant or the accused may cause the sample of the drug produced to be sent for test to the State Laboratory whereas no such procedure has been followed in this matter.

(E) That, in this matter there is also non-compliance of the procedure prescribed under Rule 46 of the Rules as the Govt. analyst has not supplied to the inspector a report in Form 13 of the result of the test or analysis, together with full protocols of the tests or analysis applied forthwith.

3. Even if the above report is accepted, the same does not speak about the ingredients of offence under Section 17 B(d) of the Act. Offence, if any, was committed in the State of Maharashtra as the drug was manufactured at Maharashtra and thus, no part of cause of action arose within the territorial jurisdiction of the learned trial Court and lastly, the petitioner No. 2 is a mere director who in reply to the communication of the complainant vide his letter dated 9.3.2006 only explained the process by which the drug in question is

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manufactured and no evidence has been adduced in the complaint regarding participation of petitioner No. 2 as director of the Company in commission of the offence.

4. Reliance is placed on the judgment delivered in the matter of **S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalia and Anr.** reported in **2006(1) DCR 1** and it is contended by learned counsel for the petitioners that petitioner No. 2 cannot be prosecuted simply because he happens to be director of the Company unless the complaint makes any specific allegations of his participation in the crime.

5. Further placing reliance on the judgment in the matter of **State of Haryana Vs. Brij Lal Mittal and others**, reported in **1998 Cri.L.J. 3287,** it is submitted that in the absence of any specific allegation that the director was in-charge of the Company and was responsible to the Company for the conduct of its business, he cannot be prosecuted.

6. Citing the judgment of Bombay High Court reported in **1999 Cri.L.J. 2903** in the matter of **M/s Zim Laboratories, Bombay and others Vs. State of Maharashtra** it is argued that if there is failure on the part of the drug inspector to move Court for sending sample to re-analyze, as a result of which the accused is deprived of his valuable statutory right of getting sample re-analyzed from Central Drugs Laboratory, the prosecution is vitiated.

7. I have heard learned counsel for the petitioners and perused the material available on record including the complaint filed by the complainant.

8. The complaint was filed with the allegations that M/s Alkem Lab. Ltd. (in short 'the Company') is manufacturer of the drugs whereas petitioner No. 1 Rajesh Thomas is its Depot executive and petitioner No. 2 Dhananjay Kumar Singh is the director. The premises of M/s Gupta Medical Agency (accused No.1) was inspected on 31.8.2004 and during inspection medicine 'Alkem Plus' cold & cough suspension 100 m.l. manufactured by the Company was found in the stock for sale. At that time four bottles of the above drug were purchased by the complainant for sending it to Govt. analysts for analysis and entries were made in Form 17 and copy of

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the same was handed over to accused No. 1. The purchased drug was sealed, signature of accused No. 1 was obtained and the same were sent on 4.9.2004 to Govt. analysts, Central Drug Laboratory (C.D.L.), Kolkata for analysis after filling in Form 18. C.D.L. Kolkata demanded 'method of analysis and specification' vide letter dated 4.1.2005 whereupon the complainant vide his communication dated 27.1.2005 asked the manufacturer Company for method of analysis and specification. In reply to the said communication the Company vide its communication dated 7.2.2005 sent three working standard samples along with seven annexures, which were sent to the C.D.L. Kolkata on 3.3.2005. In the investigation report dated 1.12.2005/10.1.2006 CDL, Koklata communicated that the constituents of the said medicine 'Cetirizine HCL' were found Nil in place of 2.5 m.g. as claimed, therefore, under Section 17 B (d) of the Act, the drug was declared spurious.

9. The above report was sent to accused No. 1 on 23.1.2006. Copy of the analysis report was forwarded to the Company on 23.1.2006 which was returned with a tip that the Company is not to be found on the given address. Thereafter, the same letter was again sent on 2.2.2006. Copy of the report was also sent to the Head Office of the Company at Mumbai. Accused No. 1 produced the purchase bills issued by M/s Indian Sales, Telghani Naka, Raipur (accused No.2) whereupon information was sought from the sellers, then it was informed that the drug was supplied from the depot of the Company where petitioner No. 1 is depot executive. The Company in its reply received on 21.2.2006 expressed disagreement with the report, on which a communication was sent to the Company calling upon it to appear before the Court and get the last sample analyzed from CDL, Kolkata through Court. However, the Company in its fax message sent through petitioner No. 1 Rajesh Thomas communicated that "we had no intention to challenge the report of Govt. Analyst".

10. If we examine the complaint in the light of the arguments advanced by learned counsel for the petitioners, we find that the sample was taken on 31.8.2004 and the same was forwarded on 4.9.2004, thus there is a delay of four days only in forwarding the sample, which itself cannot be a reason to quash the prosecution at the threshold.

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11. So far as the objection of learned counsel for the petitioners regarding non-compliance of the procedure prescribed under the Act & Rules is concerned, from the averments contained in the complaint, it is manifestly clear that the drug was purchased for getting it analyzed and accordingly, Form 17 was filled, copy of the same was handed over to accused No. 1 and after complying with the procedure prescribed under Rule 57 of Rules the sample was dispatched to the Govt. analyst along with memorandum in Form 18 and after receiving the report therefrom a copy of the same was sent to accused No.1 as also the Company. After receiving the reply from the Company, it was directed to appear before the Court on 6.3.2006 for getting the drug re-examined through the Court, whereupon the petitioner No.1 handed over a fax message received by him from the Company to the complainant wherein it was mentioned that they do not have intention to challenge the report of Govt. analyst. Section 25 (4) of the Act specifically mentions that the Court may sent the sample for re-analysis of its own motion or in its discretion at the request of the complainant or the accused. Thus, from perusal of the complaint itself it is manifestly clear that the procedure as given in the Act & Rules has been followed by the complainant in substance.

12. So far as the argument that report of the CDL, Kolkata does not reveal the ingredients of offence under Section 17 B (d) of the Act is concerned, from bare perusal of the report it is abundantly clear that the sample did not confirm to the claimed constituents and the same has been found to be spurious.

13. The principles of law laid down in the matter of S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalia and Anr. (supra) are distinguishable on facts as the petitioner No. 2 being director of the Company vide his reply dated 9.2.2006 has explained the manufacturing process of the drug in question.

14. So far as the objection that the petitioners were deprived of their valuable statutory rights to get the samples re-examined, is concerned, paragraph 16 of the complaint specifically mentions that a communication was sent to the accused persons to be present in the Court on the specified date so that the samples may be sent for re-examination through the Court and in reply to the said

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communication, the accused persons themselves specifically expressed that they do not have intention to challenge the report of Govt. analyst.

15. Thus, from perusal of the allegations in complaint in which there are reference/correspondences, which have not been produced by the petitioners along with the petitioner, this Court is of the considered opinion that the drug inspector after substantially complying with the procedure prescribed under the Act & Rules has filed the above complaint and the grounds urged by the petitioners are not made out.

16. So far as the argument regarding lack of territorial jurisdiction is concerned, in the light of the fact that spurious drug was supplied within the jurisdiction of the trial Court from the depot of the Company to various druggists and medical agencies, this ground is also without substance.

17. The Hon'ble Apex Court in plethora of its decisions has reiterated the principles relating to exercise of jurisdiction under Section 482 of the Code to quash complaints and criminal proceedings. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

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(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

18. If the above principles of law are applied in the present case, it cannot be said that the allegations made in the complaint are not sufficient to prima facie constitute an offence alleged against the petitioners and it is an abuse of process of the court or it has been actuated with mala fides/malice.

19. In the light of principles of law laid down by the Hon'ble Apex Court as to exercise of jurisdiction under Section 482 of the Code to quash complaints and criminal proceedings, this Court is of the considered opinion that from perusal of the complaint prima facie offence under Section 17 B (d), read with Section 18 (a)(i) and Section 27 (C) of the Act, is made out against the petitioners.

20. In the result, the instant petition being devoid of substance is liable to be dismissed at the admission stage itself and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge

3-**8.2007**